

114TH CONGRESS
1ST SESSION

H. R. 1317

AN ACT

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to specify how clearing requirements apply to certain affiliate transactions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.**

2 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

3 Section 2(h)(7)(D) of the Commodity Exchange Act (7
4 U.S.C. 2(h)(7)(D)) is amended—

5 (1) by redesignating clause (iii) as clause (v);

6 (2) by striking clauses (i) and (ii) and inserting
7 the following:

8 “(i) IN GENERAL.—An affiliate of a
9 person that qualifies for an exception
10 under subparagraph (A) (including affiliate
11 entities predominantly engaged in pro-
12 viding financing for the purchase of the
13 merchandise or manufactured goods of the
14 person) may qualify for the exception only
15 if the affiliate—

16 “(I) enters into the swap to
17 hedge or mitigate the commercial risk
18 of the person or other affiliate of the
19 person that is not a financial entity,
20 and the commercial risk that the affil-
21 iate is hedging or mitigating has been
22 transferred to the affiliate;

23 “(II) is directly and wholly-owned
24 by another affiliate qualified for the
25 exception under this subparagraph or
26 an entity that is not a financial entity;

1 “(III) is not indirectly majority-
2 owned by a financial entity;

3 “(IV) is not ultimately owned by
4 a parent company that is a financial
5 entity; and

6 “(V) does not provide any serv-
7 ices, financial or otherwise, to any af-
8 filiate that is a nonbank financial
9 company supervised by the Board of
10 Governors (as defined under section
11 102 of the Financial Stability Act of
12 2010).

13 “(ii) LIMITATION ON QUALIFYING AF-
14 FILLATES.—The exception in clause (i)
15 shall not apply if the affiliate is—

16 “(I) a swap dealer;

17 “(II) a security-based swap deal-
18 er;

19 “(III) a major swap participant;

20 “(IV) a major security-based
21 swap participant;

22 “(V) a commodity pool;

23 “(VI) a bank holding company;

24 “(VII) a private fund, as defined
25 in section 202(a) of the Investment

1 Advisers Act of 1940 (15 U.S.C. 80–
2 b–2(a));

3 “(VIII) an employee benefit plan
4 or government plan, as defined in
5 paragraphs (3) and (32) of section 3
6 of the Employee Retirement Income
7 Security Act of 1974 (29 U.S.C.
8 1002);

9 “(IX) an insured depository insti-
10 tution;

11 “(X) a farm credit system insti-
12 tution;

13 “(XI) a credit union;

14 “(XII) a nonbank financial com-
15 pany supervised by the Board of Gov-
16 ernors (as defined under section 102
17 of the Financial Stability Act of
18 2010); or

19 “(XIII) an entity engaged in the
20 business of insurance and subject to
21 capital requirements established by an
22 insurance governmental authority of a
23 State, a territory of the United
24 States, the District of Columbia, a
25 country other than the United States,

1 or a political subdivision of a country
2 other than the United States that is
3 engaged in the supervision of insur-
4 ance companies under insurance law.

5 “(iii) LIMITATION ON AFFILIATES’ AF-
6 FILIATES.—Unless the Commission deter-
7 mines, by order, rule, or regulation, that it
8 is in the public interest, the exception in
9 clause (i) shall not apply with respect to an
10 affiliate if the affiliate is itself affiliated
11 with—

12 “(I) a major security-based swap
13 participant;

14 “(II) a security-based swap deal-
15 er;

16 “(III) a major swap participant;
17 or

18 “(IV) a swap dealer.

19 “(iv) CONDITIONS ON TRANS-
20 ACTIONS.—With respect to an affiliate that
21 qualifies for the exception in clause (i)—

22 “(I) the affiliate may not enter
23 into any swap other than for the pur-
24 pose of hedging or mitigating com-
25 mercial risk; and

1 “(II) neither the affiliate nor any
2 person affiliated with the affiliate that
3 is not a financial entity may enter
4 into a swap with or on behalf of any
5 affiliate that is a financial entity or
6 otherwise assume, net, combine, or
7 consolidate the risk of swaps entered
8 into by any such financial entity, ex-
9 cept one that is an affiliate that quali-
10 fies for the exception under clause
11 (i).”;

12 (3) by adding at the end the following:

13 “(vi) RISK MANAGEMENT PROGRAM.—
14 Any swap entered into by an affiliate that
15 qualifies for the exception in clause (i)
16 shall be subject to a centralized risk man-
17 agement program of the affiliate, which is
18 reasonably designed both to monitor and
19 manage the risks associated with the swap
20 and to identify each of the affiliates on
21 whose behalf a swap was entered into.”.

22 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
23 MENT.—Section 3C(g)(4) of the Securities Exchange Act
24 of 1934 (15 U.S.C. 78c–3(g)(4)) is amended—

1 (1) by redesignating subparagraph (C) as sub-
2 paragraph (E);

3 (2) by striking subparagraphs (A) and (B) and
4 inserting the following:

5 “(A) IN GENERAL.—An affiliate of a per-
6 son that qualifies for an exception under this
7 subsection (including affiliate entities predomi-
8 nantly engaged in providing financing for the
9 purchase of the merchandise or manufactured
10 goods of the person) may qualify for the excep-
11 tion only if the affiliate—

12 “(i) enters into the security-based
13 swap to hedge or mitigate the commercial
14 risk of the person or other affiliate of the
15 person that is not a financial entity, and
16 the commercial risk that the affiliate is
17 hedging or mitigating has been transferred
18 to the affiliate;

19 “(ii) is directly and wholly-owned by
20 another affiliate qualified for the exception
21 under this paragraph or an entity that is
22 not a financial entity;

23 “(iii) is not indirectly majority-owned
24 by a financial entity;

1 “(iv) is not ultimately owned by a par-
2 ent company that is a financial entity; and

3 “(v) does not provide any services, fi-
4 nancial or otherwise, to any affiliate that is
5 a nonbank financial company supervised by
6 the Board of Governors (as defined under
7 section 102 of the Financial Stability Act
8 of 2010).

9 “(B) LIMITATION ON QUALIFYING AFFILI-
10 ATES.—The exception in subparagraph (A)
11 shall not apply if the affiliate is—

12 “(i) a swap dealer;

13 “(ii) a security-based swap dealer;

14 “(iii) a major swap participant;

15 “(iv) a major security-based swap par-
16 ticipant;

17 “(v) a commodity pool;

18 “(vi) a bank holding company;

19 “(vii) a private fund, as defined in
20 section 202(a) of the Investment Advisers
21 Act of 1940 (15 U.S.C. 80–b–2(a));

22 “(viii) an employee benefit plan or
23 government plan, as defined in paragraphs
24 (3) and (32) of section 3 of the Employee

1 Retirement Income Security Act of 1974
2 (29 U.S.C. 1002);

3 “(ix) an insured depository institu-
4 tion;

5 “(x) a farm credit system institution;

6 “(xi) a credit union;

7 “(xii) a nonbank financial company
8 supervised by the Board of Governors (as
9 defined under section 102 of the Financial
10 Stability Act of 2010); or

11 “(xiii) an entity engaged in the busi-
12 ness of insurance and subject to capital re-
13 quirements established by an insurance
14 governmental authority of a State, a terri-
15 tory of the United States, the District of
16 Columbia, a country other than the United
17 States, or a political subdivision of a coun-
18 try other than the United States that is
19 engaged in the supervision of insurance
20 companies under insurance law.

21 “(C) LIMITATION ON AFFILIATES’ AFFILI-
22 ATES.—Unless the Commission determines, by
23 order, rule, or regulation, that it is in the public
24 interest, the exception in subparagraph (A)

1 shall not apply with respect to an affiliate if
2 such affiliate is itself affiliated with—

3 “(i) a major security-based swap par-
4 ticipant;

5 “(ii) a security-based swap dealer;

6 “(iii) a major swap participant; or

7 “(iv) a swap dealer.

8 “(D) CONDITIONS ON TRANSACTIONS.—

9 With respect to an affiliate that qualifies for
10 the exception in subparagraph (A)—

11 “(i) such affiliate may not enter into
12 any security-based swap other than for the
13 purpose of hedging or mitigating commer-
14 cial risk; and

15 “(ii) neither such affiliate nor any
16 person affiliated with such affiliate that is
17 not a financial entity may enter into a se-
18 curity-based swap with or on behalf of any
19 affiliate that is a financial entity or other-
20 wise assume, net, combine, or consolidate
21 the risk of security-based swaps entered
22 into by any such financial entity, except
23 one that is an affiliate that qualifies for
24 the exception under subparagraph (A).”;
25 and

1 (3) by adding at the end the following:

2 “(F) RISK MANAGEMENT PROGRAM.—Any
3 security-based swap entered into by an affiliate
4 that qualifies for the exception in subparagraph
5 (A) shall be subject to a centralized risk man-
6 agement program of the affiliate, which is rea-
7 sonably designed both to monitor and manage
8 the risks associated with the security-based
9 swap and to identify each of the affiliates on
10 whose behalf a security-based swap was entered
11 into.”.

Passed the House of Representatives November 16,
2015.

Attest:

Clerk.

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